IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

I.T.A. No. 493 of 2005

Date of Decision: 8.10.2007

Commissioner of Income Tax, Hisar

...Appellant

Versus

Dr. M.R. Sapra

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Yogesh Putney, Advocate,
for the appellant-revenue.

Mr. Akshay Bhan, Advocate,
for the respondent-assessee.

M.M. KUMAR, J.

This appeal filed under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act') is directed against order dated 18.3.2005, passed by the Income Tax Appellate Tribunal, Delhi Bench 'A', New Delhi (for brevity, 'the Tribunal'), in ITA No. 4285/DEL/2000, in respect of the assessment year 1997-98. The

revenue has claimed that following substantial question of law would emerge for determination of this Court from the aforementioned order of the Tribunal:-

> Whether on the facts and in the circumstances of the case, the Tribunal has erred in law in confirming the deletion of the impugned addition of Rs. 9,62,777/- on account of interest income accrued on FDRs of the assessee even when the said interest was free from all encumbrances and was liable to be taxed as per the provisions of the Income-tax Act, 1961?

We have heard learned counsel for the parties and perused the orders passed by the Assessing Officer, CIT (A) as well as the Tribunal with their able assistance.

At the outset it is apposite to notice that at the time of issuance of notice of motion, learned counsel for the revenue has pointed out that the aforementioned question of law has already been decided by a Division Bench of this Court, of which one of us (Ajay Kumar Mittal, J.) was a member, in the case of the respondent-assessee itself being I.T.R. No. 190 of 2004 (**Commissioner of Income-tax v. Dr. M.R. Sapra, (2005) 276 ITR 41**). In the aforementioned case, similar question of law came up for consideration in the case of same assessee in respect of earlier assessment year 1994-95 and the same has been answered in favour of the appellant-revenue and against the respondent-assessee by observing as under:-

" The judgment of the honourable Supreme Court in Hindustan Housing and Land Development Trust Ltd.'s case [1986] 161 ITR 524 has no application in the present case. That was a case where certain land belonging to the assessee was requisitioned and compulsorily acquired by the State. The arbitrator awarded the compensation for the period of requisition. Thereupon, the State Government preferred an appeal in the High Court. During the pendency of the appeal, the State Government deposited the amount on account of additional compensation payable under the award which the assessee was allowed to withdraw on furnishing of surety bond for refunding the amount on appeal being allowed. It was on those facts that when the matter came up before the apex court, it was held that since there was no absolute right to withdraw the amount and the entire amount was in dispute in appeal filed by the State Government, therefore, no income accrued to the assessee. The court, however, drew the distinction between cases where the right to receive payment was in dispute and also between the cases where only the quantification was in dispute.

The case before the Gujarat High Court in Bavla Gopalak Vividh Karyakarisahakari Mandli Ltd.'s case [2002] 253 ITR 97 related to a matter where the grant of

subsidy itself was in dispute in the pending appeal. It was thereupon held that it did not form part of the income. That case fell within the ratio laid down by the apex court in Hindustan Housing's case [1986] 161 ITR 524.

The aforesaid judgments are not applicable to the facts of the present case. The interest amounting to Rs. 10,79,858 on the FDRs has already accrued and there was no lien or encumbrance created on this amount of interest. Moreover, the bank in the present case has also not provided any guarantee to the extent of interest accrued and thus there is no liability on the bank to deposit this amount in case the appeal of the State goes against the assessee.

In view of the above, the appeal is allowed and the substantial question of law is answered in the affirmative and it is held that the Tribunal had erred in law in confirming the deletion of the impugned addition of Rs. 10,79,858 on account of interest income accrued on the FDRs of the assessee."

It is an admitted position that the facts of the instant appeal are similar to the one which have already been adjudicated upon by this Court in ITA No. 190 of 2004 (supra), therefore, we do not feel the necessity to refer the same. Moreover, learned counsel for the respondent-assessee has not been able to show that there is

any distinction in the present case from the one which has already been decided by the Division Bench of this Court.

In view of above, following the principle of consistency, instant appeal is allowed being squarely covered by a Division Bench judgment of this Court rendered in I.T.A. No. 190 of 2004 (supra) and the substantial question of law is answered in favour of the appellant-revenue and against the respondent-assessee and it is held that the Tribunal has erred in law in confirming the deletion of impugned addition of Rs. 9,62,777/- on account of interest income accrued on the FDRs of the assessee.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 8, 2007
Pkapoor

FIT FOR INDEXING